

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CEMENT MASONS PENSION FUND, LOCAL)
502; CEMENT MASONS INSTITUTE OF)
CHICAGO, ILLINOIS; CEMENT MASONS)
SAVINGS FUND, LOCAL 502; and CEMENT)
MASONS APPRENTICE EDUCATION)
AND TRAINING FUND, LOCAL 502,)

Plaintiffs,

v.

PAN OCEANIC ENGINEERING CO., INC.,)
an Illinois corporation,)
Defendant.)

FILED: AUGUST 20, 2008

08CV4726

JUDGE DER-YEGHIAYAN

MAGISTRATE JUDGE NOLAN

No. PH

Judge

Magistrate Judge

COMPLAINT

Plaintiffs, by their attorneys, DONALD D. SCHWARTZ and ARNOLD AND KADJAN, complain against Defendant, PAN OCEANIC ENGINEERING CO., INC., as follows:

COUNT I

1. (a) Jurisdiction of this cause is based on Section 301 of the National Labor Relations Act, 29 U.S. C. Section 185(a) as amended.

(b) Jurisdiction of this cause is based upon Section 502 of the Employee Retirement Security Act of 1974, 29 U.S.C. Section 1132, 1145 ("ERISA"), as amended.

2. Venue is founded pursuant to 29 U.S.C. Section 1132(e)(2) in this District where the Funds, as described in Paragraph 3, are administered.

3. (a) The Plaintiffs in this count are the CEMENT MASONS PENSION FUND, .LOCAL 502; CEMENT MASONS INSTITUTE OF CHICAGO, ILLINOIS; CEMENT MASOSN SAVINGS FUND, LOCAL 502; AND CEMENT MASONS APPRENTICE EDUCATION AND TRAINING FUND, LOCAL 502, ("the Funds"), and have standing to sue

pursuant to 29 U.S.C. Section 1132(d)(1).

(b) The Funds have been established pursuant to collective bargaining agreements previously entered into between the Cement Masons Union and its affiliated locals (the "Union") and certain employer associations whose employees are covered by the collective bargaining agreement with the Union.

(c) The Funds are maintained and administered in accordance with and pursuant to the provisions of the National Labor Relations Act, as amended, and other applicable state and federal laws and also pursuant to the terms and provisions of the agreements and Declarations of Trust which establish the Funds.

4. Defendant, PAN OCEANIC ENGINEERING CO., INC., (**"PAN"**), is an Illinois corporation doing business within this Court's jurisdiction. **PAN** is an employer engaged in an industry affecting commerce.

5. Since **August 23, 2002**, **PAN** has agreed to be bound by successive collective bargaining agreements with the Union pursuant to which it is required to make periodic contributions to the Cement Masons Pension Funds on behalf of its employees by virtue of submitting signed monthly fringe benefit report forms to Plaintiffs (Exhibit "A").

6. **PAN** is required to make contributions to the Funds on behalf of its Cement Mason employees and, when given reasonable notice by Plaintiffs or their representatives, to submit all necessary books and records to Plaintiffs' accountant for the purpose of determining whether or not it is in compliance with its obligation to contribute to the Funds.

7. Plaintiffs are advised and believe that **August 23, 2002**, **PAN** has failed to make some of the contributions from time to time required to be paid by it to the Funds pursuant to the terms of the Trust Agreements by which it is bound, all in violation of its contractual obligations

and its obligations under applicable state and federal statutes.

WHEREFORE, Plaintiffs pray for relief as follows:

- A. **PAN** be ordered to submit to an audit for the period **August 23, 2002 to the present**.
- B. Judgment be entered on any amounts found to be due on the audit.
- C. Plaintiffs be awarded their costs herein, including reasonable attorneys' fees and costs incurred in the prosecution of this action, together with liquidated damages in the amount of 20%, all as provided in the applicable agreements and ERISA Section 502(g)(2).
- D. **PAN** be enjoined from violating the terms of the collective bargaining agreements and Trust Agreements by failing to make timely payments to the Funds and be ordered to resume making those payments.
- E. This Court grant Plaintiffs such other and further relief as it may deem appropriate under the circumstances.

Respectfully submitted,

**TRUSTEES OF THE CEMENT MASONS
PENSION FUND, LOCAL 502, et al.**

By: s/Donald D. Schwartz
One of their Attorneys

Donald D. Schwartz
ARNOLD AND KADJAN
19 W. Jackson Blvd.
Chicago, IL 60604
(312) 236-0415